IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 138 OF 1981
IN
FIRST APPEAL NO.122 OF 1973

ALONGWITH

LETTERS PATENT APPEAL NO.139 1981
IN
FIRST APPEAL NO.147 OF 1974

Babu Dada Mahajan
since deceased, by his heirs
1. Smt. Tarabai Babu Mahajan & Ors. ....Appellants.

V/s

Gajanan Virupaksha Khadake
since deceased, by his heirs
1. Smt. Jaydevi Gajanan Khadake
and Ors. .... Respondents.

Mr. P.D. Dani for appellants.

Mr. Amit Borkar for respondent No.1.

Mr. S.M. Dandekar for Respondent No.2.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATE : 27th November, 2007.

P.C.:

1. Heard the learned Counsel appearing on behalf of appellants and the learned Counsel appearing on behalf of respondents.

2. Brief facts which are relevant for the purpose of deciding both these Letters Patent Appeals are as under:-

3. One B.D. Mahahan and others had filed a suit inter alia praying for re-conveyance of the property on the alleged oral agreement to recover the property conveyed to one Mr. G.V. Khadake by a registered sale deed. Mr. Khadake had also filed a suit against B.D. Mahajan and others for possession. The suit filed by B.D. Mahajan and others was dismissed, whereas, the suit filed by Mr. G.V. Khadake was decreed. Against the said judgment and decree, B.D. Mahajan and others filed First Appeal No.122 of 1973 and First Appeal No.147 of 1974 in this Court. The learned Single Judge was pleased to dismiss both these First Appeals by passing a common judgment and order. Being aggrieved by the said judgment and order, B.D. Mahajan and others have filed these two Letters Patent Appeals.

4. The learned Counsel appearing on behalf of appellants has taken us through the judgment and order of the learned Single Judge. There cannot be any dispute that there can be an oral agreement for re-conveyance of the property. However, in such a case, the oral agreement has to be proved by adducing an oral evidence which has to be accepted by the Court on the basis of

preponderance of probabilities. The Trial Court as well as the learned Single Judge of this Court have disbelieved the oral testimony of plaintiff No.1 and his witnesses. Perusal of the record indicates that in support of the contention that there was an oral agreement of re-conveyance, the plaintiffs have examined one Ramniklal. The learned Single Judge, after having perused the said evidence, has disbelieved the testimony of this witness firstly on the ground that he was a tenant of plaintiffs and there was a long standing enmity between the said Ramniklal and the defendant. The learned Single Judge, therefore, has observed that it is difficult to believe that, in such circumstances, defendant could go to Ramniklal and admit the agreement. The learned Single Judge, therefore, observed that Ramniklal, therefore, appears to have come forward to give evidence only to oblige the plaintiffs without having any real knowledge of the transaction. The learned Single Judge has also taken into consideration the other evidence on record while rejecting the contentions of the plaintiffs.

5. No case is made out, in our view, to interfere with the finding recorded by the learned Single Judge who has confirmed the finding recorded by the Trial Court. In the result, both the Letters Patent Appeals are dismissed. Under the circumstances, there shall be no order as to costs.

6. At this stage, the learned Counsel for appellants seeks continuation of ad-interim relief granted by this Court when the matter was admitted. Interim relief to continue for a period of six

weeks on the condition that the appellants file an undertaking on usual terms within two weeks from today. If this undertaking on usual terms is not filed within two weeks, interim relief to stand vacated forthwith without further reference to this Court.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)